

Internal Revenue Service, Treasury

§ 1.904(f)-1T

(ii) All capital loss carryovers to the current taxable year attributable to the same limitation to the extent that foreign source capital loss carryovers reduced United States source capital gain net income for the taxable year.

(4) [Reserved] For further guidance, see § 1.904(f)-1T(d)(4).

(e) *Reductions of overall foreign loss accounts.* The taxpayer shall subtract the following amounts from its overall foreign loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall foreign loss account is reduced by the amount of any overall foreign loss which is allocated to another taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses).

(2) *Reduction for amounts recaptured.* An overall foreign loss account is reduced by the amount of any foreign source income that is subject to the same limitation as the loss that resulted in the account and that is recaptured in accordance with § 1.904(f)-2 (c) (relating to recapture under section 904(f)(1)); § 1.904(f)-2 (d) (relating to recapture when the taxpayer disposes of certain properties under section 904(f)(3)); and § 1.904(f)-4 (relating to recapture when the taxpayer receives an accumulation distribution from a foreign trust under section 904(f)(4)).

(f) *Illustrations.* The rules of this section are illustrated by the following examples.

Example 1. X Corporation is a domestic corporation with foreign branch operations in country C. X's taxable income and losses for its taxable year 1983 are as follows:

U.S. Source taxable income	\$1,000
Foreign source taxable income (loss)	
subject to the general limitation	
.....	(\$500)
Foreign source taxable income subject	
to the passive interest limitation	
.....	\$200

X has a general limitation overall foreign loss of \$500 for 1983 in accordance with paragraph (c) (1) of this section. Since the general limitation overall foreign loss is not considered to offset income under the separate limitation for passive interest income, it therefore offsets \$500 of United States source taxable income. This amount is added to X's general limitation overall foreign loss

account at the end of 1983 in accordance with paragraphs (c) (1) and (d) (1) of this section.

Example 2. Y Corporation is a domestic corporation with foreign branch operations in Country C. Y's taxable income and losses for its taxable year 1982 are as follows:

U.S. source taxable income	\$1,000
Foreign source taxable income (loss)	
subject to the general limitation	
.....	(\$500)
Foreign source taxable income subject	
to the passive interest limitation	
.....	\$250

For its pre-1983 taxable years, Y filed its returns determining its overall foreign losses on a combined basis. In accordance with paragraphs (a) and (c) (1) of this section, Y may net the foreign source income and loss before offsetting the United States source income. Y therefore has a section 904(d)(1)(A-C) overall foreign loss account of \$250 at the end of 1982.

Example 3. X Corporation is a domestic corporation with foreign branch operations in country C. For its taxable year 1985, X has taxable income (loss) determined as follows:

U.S. source taxable income	\$200
Foreign source taxable income (loss)	
subject to the general limitation	
.....	(\$1,000)
Foreign source taxable income (loss)	
subject to the passive limitation	
.....	\$1,800

X has a general limitation overall foreign loss of \$1,000 in accordance with paragraph (c)(1) of this section. The overall foreign loss offsets \$200 of United States source taxable income in 1985 and, therefore, X has a \$200 general limitation overall foreign loss account at the end of 1985. The remaining \$800 general limitation loss is offset by the passive interest limitation income in 1985 so that X has no net operating loss carryover that is attributable to the general limitation loss and no additional amount attributable to that loss will be added to the overall foreign loss account in 1985 or in any other year.

(g) [Reserved] For further guidance, see § 1.904(f)-1T(g).

[T.D. 8153, 52 FR 31994, Aug. 25, 1987; 52 FR 43434, Nov. 12, 1987, as amended by T.D. 9371, 72 FR 72597, Dec. 21, 2007]

§ 1.904(f)-1T Overall foreign loss and the overall foreign loss account (temporary).

(a)(1) [Reserved] For further guidance, see § 1.904(f)-1(a)(1).

(2) *Application to post-1986 taxable years.* The principles of §§ 1.904(f)-1 through 1.904(f)-5 shall apply to overall foreign loss sustained in taxable years beginning after December 31, 1986,

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modified so as to take into account the effect of statutory amendments.

(b) through (d)(3) [Reserved] For further guidance, see § 1.904(f)-1(b) through (d)(3).

(d)(4) *Adjustments for capital gains and losses.* If a taxpayer has capital gains or losses, the taxpayer shall make adjustments to such capital gains and losses to the extent required under section 904(b)(2) and § 1.904(b)-1 before applying the provisions of § 1.904(f)-1T. See § 1.904(b)-1(h).

(e) and (f) [Reserved] For further guidance, see § 1.904(f)-1(e) and (f).

(g) *Effective/applicability date.* This section applies to taxable years beginning after December 21, 2007.

(h) *Expiration date.* The applicability of this section expires on December 20, 2010.

[T.D. 9371, 72 FR 72597, Dec. 21, 2007]

§ 1.904(f)-2 Recapture of overall foreign losses.

(a) *In general.* A taxpayer shall be required to recapture an overall foreign loss as provided in this section. Recapture is accomplished by treating as United States source income a portion of the taxpayer's foreign source taxable income of the same limitation as the foreign source loss that resulted in an overall foreign loss account. As a result, if the taxpayer elects the benefits of section 901 or section 936, the taxpayer's foreign tax credit limitation with respect to such income is decreased. As provided in § 1.904 (f)-1(e)(2), the balance in a taxpayer's overall foreign loss account is reduced by the amount of loss recaptured. Recapture continues until such time as the amount of foreign source taxable income recharacterized as United States source income equals the amount in the overall foreign loss account. As provided in § 1.904 (f)-1(e)(2), the balance in an overall foreign loss account is reduced at the end of each taxable year by the amount of the loss recaptured during that taxable year. Regardless of whether recapture occurs in a year in which a taxpayer elects the benefits of section 901 or in a year in which a taxpayer deducts its foreign taxes under section 164, the overall foreign loss account is recaptured only to the extent of foreign source taxable in-

come remaining after applying the appropriate section 904(b) adjustments, if any, as provided in paragraph (b) of this section.

(b) *Determination of taxable income from sources without the United States for purposes of recapture—(1) In general.* For purposes of determining the amount of an overall foreign loss subject to recapture, the taxpayer's taxable income from sources without the United States shall be computed with respect to each of the separate limitations described in § 1.904 (f)-1(c)(2) in accordance with the rules set forth in § 1.904 (f)-1(c) (1) and (3). This computation is made without taking into account foreign source taxable income (and deductions properly allocated and apportioned thereto) subject to other separate limitations. Before applying the recapture rules to foreign source taxable income, the following provisions shall be applied to such income in the following order:

(i) Former section 904(b)(3)(C) (prior to its removal by the Tax Reform Act of 1986) and the regulations thereunder shall be applied to treat certain foreign source gain as United States source gain; and

(ii) Section 904(b)(2) and the regulations thereunder shall be applied to make adjustments in the foreign tax credit limitation fraction for certain capital gains and losses.

(c) *Section 904(f)(1) recapture—(1) [Reserved]* For further guidance, see § 1.904(f)-2T(c)(1).

(2) *Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).* In a year in which a taxpayer elects the benefits of sections 901 or 936, a taxpayer may make an annual revocable election to recapture a greater portion of the balance in an overall foreign loss account than is required to be recaptured under paragraph (c)(1) of this section. A taxpayer may make such an election or amend a prior election by attaching a statement to its annual Form 1116 or 1118. If an amendment is made to a prior year's election, an amended tax return should be filed. The statement attached to the Form 1116 or 1118 must indicate the percentage and dollar amount of the taxpayer's foreign source taxable income that is being recharacterized as United States source income and the